

ANGIE SPARKS  
CLERK DISTRICT COURT

2017 JAN -9 AM 10:40

FILED  
BYMICHELLE WRAY  
Deputy

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4 Bozeman, Montana 59715  
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9 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

10 KATHERINE DILLON,

11 Plaintiff,

12 vs.

13 PROGRESSIVE CASUALTY  
14 INSURANCE COMPANY,

15 Defendant.

Cause Number DV-16- BDR 2017-19

COMPLAINT

DECLARATORY JUDGMENT ACT

MICHAEL F MCMAHON  
PRESIDING JUDGE

16 COMES NOW plaintiff Katherine Dillon, by and through her counsel of record  
17 Geoffrey C. Angel, and for her claims for relief alleges as follows:

18 NATURE OF ACTION

- 19 1. This action is being brought by Katherine Dillon against Progressive Casualty  
20 Insurance Company for a declaration the duty to advance pay medical expenses  
21 encompasses a promise to pay or advance payment when that is a requirement for  
22 medical treatment.
- 23 2. At all times relevant herein Katherine Dillon was a resident and domicile of  
24 Gallatin County, Montana.
- 25 3. Progressive Casualty Insurance Company is a subsidiary of Progressive  
26 Corporation. Progressive Corporation (Progressive) is an Ohio Corporation with  
27 its principle place of business in Ohio.  
28

COMPLAINT:

PAGE 1 OF 4.

EXHIBIT

tabbies

A

- 1       3.       Progressive Corporation (Progressive) is an Ohio Corporation with its principle  
2               place of business in Ohio.  
3
- 4       4.       Progressive Corporation is the Parent Corporation of a number of subsidiaries and  
5               affiliates who insure motor vehicles in Montana and the various states and who  
6               are subject to the laws of the state of Montana due to the adjustment of losses  
7               within this state.  
8
- 9       5.       Progressive operates in Montana under a number of subsidiaries and affiliates  
10              including Progressive Advanced Insurance Company, Progressive Casualty  
11              Insurance Company Direct Insurance Company, Progressive Classic Insurance  
12              Company, Progressive Commercial Insurance Company, Progressive Direct  
13              Insurance Company, Progressive Max Insurance Company, Progressive Northern  
14              Insurance Company, Progressive Northwestern Insurance Company, Progressive  
15              Preferred Insurance Company, Progressive Specialty Insurance Company and  
16              Progressive West Insurance Company among others.  
17
- 18      6.       Progressive Corporation also operates in the various states other than Montana  
19              under a number of subsidiary and affiliates who are subject to the laws of the state  
20              of Montana due to losses that occur here and are adjusted by Progressive within  
21              Montana including Artisan and Truckers Casualty Insurance Company among  
22              others.  
23
- 24      7.       This action seeks to redress Progressive's adjusting practices on behalf of all of its  
25              subsidiaries and affiliates, for losses that occurred in Montana or are otherwise  
26              subject to the insurance laws of the state of Montana.  
27  
28

- 1 8. Progressive has a system wide adjusting practice in Montana to refuse to pay the  
2 full measure for loss of use damages for vehicles damaged in Montana or under a  
3 Montana policy of insurance.  
4
- 5 9. Progressive systematically pays or offers to pay, not the reasonable rental value of  
6 a comparable vehicle, as required by Montana law but instead pays its  
7 "sweatheart" rate with Enterprise Rent A Car which is a rate well below the daily  
8 rental value of a comparable vehicle.  
9
- 10 10. In 2009 Montana's Commissioner of Securities and Insurance issued an Advisory  
11 Memorandum, which carries the weight of law, regarding the proper measure of  
12 loss of use damages.  
13
- 14 11. "With regard to loss of use of personal property, the measure of damages is the  
15 reasonable rental value of comparable property for the period of time  
16 necessary to repair or replace the damaged property regardless of whether or not a  
17 rental was obtained." *Letter Monica Lindeen to Property and Casualty Insurers*  
18 *and Licensed Adjusters dated March 16, 2009, Exhibit A.*  
19
- 20 12. The "reasonable rental value of a comparable vehicle means the rental value of a  
21 vehicle of like kind and quality from the time of loss until the damaged vehicle  
22 is repaired." *Id.*  
23
- 24 13. Instead of paying the fair market value of a comparable vehicle Progressive pays  
25 or offers to pay a reduced rate based on its private negotiated rate with just one  
26 national rental car agency, Enterprise Rent A Car, which is far below the  
27 reasonable rental value of a comparable vehicle.  
28

1 14. In this case, a comparable vehicle, a Luxury SUV, rents for \$229 per day at the  
2 cheapest rental agency in the Bozeman area and yet Progressive claims it has  
3 negotiated a sweetheart rate of \$54.99 per day with Enterprise Rent A Car. The  
4 difference withheld by Progressive in this single property damage claim is  
5 \$3,132.18 *See Expedia Car Rental Rates for Bozeman, Exhibit B.*

6  
7 15. Progressive denied the fair market reasonable rental value of a comparable vehicle  
8 based upon its institutional practice to pay only the sweetheart rate "guaranteed  
9 rate by Enterprise Rent A Car" when Progressive actually rents a vehicle from  
10 Enterprise. *Letter Progressive to Angel dated March 25, 2015, Exhibit C.*

11  
12 16. In this case Progressive did not provide Katherine Dillon with a rental vehicle  
13 from Enterprise at its sweetheart below market rate and it cannot rely on this  
14 reduced rate to measure the fair market reasonable rental value when calculating  
15 loss of use. The result of such a practice in this case alone resulted in an  
16 underpayment of \$3,132.18.

17  
18 17. On March 1, 2015 Katherine Dillon was traveling West along Tschache Lane in  
19 Bozeman on dry clear roads when Progressive's insured pulled out of a parking  
20 lot and t-boned Mrs. Dillon's vehicle.

21  
22 18. Mr. Dillon used the vehicle the day following the accident to drive to work but  
23 didn't use it for anything else once he noticed significant alignment issues which  
24 appeared to make it unsafe to drive.

25  
26 19. Mr. Dillon then took the vehicle for a repair estimate after which they were told  
27 not to drive the vehicle due to safety issues.  
28

1 20. Mrs. Dillon suffered the loss of use of her Hummer H3 up to and during the time  
2 it was being repaired.

3  
4 21. Mrs. Dillon and Progressive agreed the loss of use was from the date of the  
5 accident through March 18, 2015 or for 18 days.

6  
7 22. Mrs. Dillon made a demand for loss of use damages from Progressive at the  
8 market rental rate and in turn Progressive paid her not the fair market value of a  
9 comparable vehicle but based on its sweetheart rate with Enterprise Rent A Car.

10  
11 23. Progressive refused to negotiate but paid according to its institutional policy  
12 which violates Montana law.

13  
14 24. Pursuant to Section 25-10-303, Montana Code Annotated, Katherine Dillon made  
15 a written request for Progressive to make an offer to resolve this property damage  
16 only claim.

17  
18 25. Progressive offered \$100 to resolve the dispute after having a "management team"  
19 review the policy which it determined to rely on to deny any further payments.

20  
21 **APPLICABLE STATE LAW**

22 26. Plaintiff's claim is being brought pursuant to Montana's Unfair Trade Practices  
23 Act §§ 33-18-201, et seq.

24  
25 **COUNT-1-UNFAIR TRADE PRACTICES ACT**

26 27. Plaintiff realleges and incorporates by reference paragraphs 1 through 26 as if  
27 fully set forth herein.  
28

1 28. Plaintiff is entitled to damages due to an insured loss.

2  
3 29. Defendant has made a general business practice of violating the Unfair Claim  
4 Settlement Practices provisions of MONT. CODE ANN. §§ 33-18-101 *et. seq.*

5  
6 30. Defendant misrepresented pertinent facts or insurance policy provisions in direct  
7 violation of MONT. CODE ANN. § 33-18-201(1).

8  
9 31. Defendant refused to pay claims without conducting a reasonable investigation  
10 based upon all available information in direct violation of MONT. CODE ANN. §  
11 33-18-201(4).

12  
13 32. Defendant's conduct in dealing with Plaintiff's claim has been dilatory in direct  
14 violation of MONT. CODE ANN. §§ 33-18-201(6).

15  
16 33. Defendant is guilty of actual malice and actual fraud as defined in MONT. CODE  
17 ANN. §§ 27-1-220 and 221.

18  
19 34. Defendant had actual knowledge that its failure to comply with the provisions of  
20 MONT. CODE ANN. § 33-18-201 would create a high probability of injury to  
21 Plaintiff and yet continued to act deliberately in conscious or intentional disregard.  
22 Defendant misrepresented the insurance policy to Plaintiff's detriment.

23  
24 **PLAINTIFF CLASS ACTION ALLEGATIONS**

25 35. Plaintiff realleges and incorporates by reference paragraphs 1 through 34 as if  
26 fully set forth herein. This class action is under Montana Rule of Civil Procedure  
27 23(a), 23(b)(1), and 23(b)(2).

28

1 36. Class Description. The class of plaintiffs in this case is described as: all claimants  
2 entitled to loss of use damages in which Progressive paid or offered to pay based  
3 upon its negotiated rates rather than the market rates for a comparable vehicle.  
4

5 37. Unfair Trade Practices Act. Defendant violated the Unfair Trade Practices Act in  
6 the manner and under the same facts for each class members as described for  
7 Plaintiff above.  
8

9 38. Time Limit. The class includes all claims made within eight years of the date of  
10 filing the complaint because plaintiff, and each class member, is an intended  
11 beneficiary of a written contract.  
12

13 39. Geographic Limit. The class includes all Montana Auto Policies and other state  
14 policies adjusted according to Montana law under the class description and within  
15 the time limit described above.  
16

17 40. Damages. Plaintiff and each class member received loss of use damages based on  
18 a below market rental rate rather than the required measure which is the fair  
19 market reasonable rental value for the time required to repair their vehicle.  
20

21 41. Numerosity of Class. The class is so numerous that joinder of the members is  
22 impractical. The frequency and persistence of Defendants' acts are so widespread  
23 that joinder of all members of the class is impracticable.  
24

25 42. Commonality of Questions. This lawsuit challenges Progressive's refusal to  
26 honor its legal obligation to pay loss of use based upon the fair market reasonable  
27 rental value of a similar vehicle.  
28

1       43.     Typicality of Claims. Plaintiff is a member of the class, and her claim is typical of  
2             all Class Members.

3  
4       44.     Adequacy of Representation. Named Plaintiff is a member of the class and has  
5             suffered a violation of her rights at the hands of Defendant. Plaintiff is  
6             represented by competent counsel with experience in class actions and counsel  
7             will fairly and adequately protect the interests of the class. Plaintiff and counsel  
8             have adequate resources to maintain the class action.

9  
10      45.     Consistency of Adjudication. The class is large in number and widely disbursed.  
11            The prosecution of separate actions by fewer than all members of the class would  
12            create a risk of inconsistent or varying adjudications with respect to individual  
13            members of the class which would establish incompatible standards for  
14            enforcement and which, as a practical matter, would dispose of the interests of the  
15            other Class Members not parties to this adjudication or would substantially impair  
16            or impede their ability to protect their interests.

17  
18      46.     Class Wide Relief. Defendants have acted and continue to act on grounds  
19            generally applicable to the class, making final class wide relief appropriate.

20  
21      47.     Superiority of Class Action. The questions of law and fact common to the  
22            members of the class predominate over any questions affecting only individual  
23            members and a class action is superior to any other available method for fair and  
24            efficient adjudication of the controversy.

25  
26      48.     Modification of Class Action Allegations. As further information is gathered,  
27            Plaintiff may modify the paragraphs in this §1n an anticipated class certification  
28            motion and brief in support.

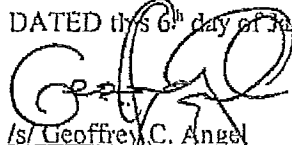


1. WHEREFORE, the plaintiff prays for judgment:
2. An amount for all special damages for Defendant's bad faith practices in violation of Montana's Unfair Trade Practices Act.
3. Punitive damages due to Defendant's fraudulent and malicious conduct in violating Montana's Unfair Trade Practices Act.
4. Costs, including reasonable attorney fees under Section 27-1-306, MCA, and under the equitable powers to be made whole.

**DEMAND FOR TRIAL BY JURY**

Plaintiff demands trial by jury on all issues of this action.

DATED this 6<sup>th</sup> day of January 2017

  
/s/ Geoffrey C. Angel  
Geoffrey C. Angel  
ANGEL LAW FIRM  
Attorney for Plaintiff



**Service of Process  
Transmittal**

09/21/2017

CT Log Number 531974372

**TO:** Gregory Tidwell  
Progressive Casualty Insurance Company  
10929 Disk Dr.  
Rancho Cordova, CA 95670-6077

**RE: Process Served in Montana**

**FOR:** Progressive Casualty Insurance Company (Domestic State: OH)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** KATHERINE DILLON, Pltf. vs. Progressive Casualty Insurance Company, Dft.

**DOCUMENT(S) SERVED:** Letter, Summons, Complaint

**COURT/AGENCY:** Clark County - Montana First Judicial District Court, MT  
Case # DV17BDY201719

**NATURE OF ACTION:** Insurance Litigation

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Missoula, MT

**DATE AND HOUR OF SERVICE:** By Regular Mail on 09/21/2017 postmarked on 09/19/2017

**JURISDICTION SERVED :** Montana

**APPEARANCE OR ANSWER DUE:** Within 21 days after the service of this summons, exclusive of the day of service

**ATTORNEY(S) / SENDER(S):** Geoffrey C. Angel  
Angel Law Firm  
803 West Babcock  
Bozeman, MT 59715  
406-922-2210

**ACTION ITEMS:** CT has retained the current log, Retain Date: 09/22/2017, Expected Purge Date:  
09/27/2017

Image SOP

Email Notification, Gregory Tidwell gregory\_t\_tidwell@progressive.com

Email Notification, Sean W. Allen sean\_w\_allen@progressive.com

Email Notification, Deborah Fisk deborah\_fisk@progressive.com

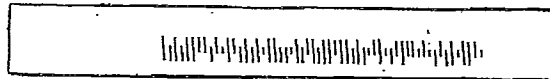
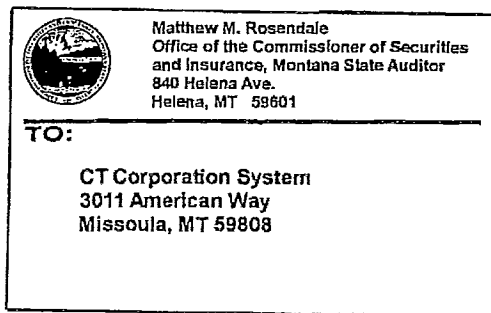
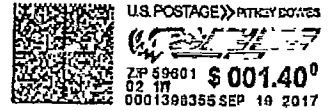
Email Notification, Paula Stewart paula\_stewart@progressive.com

Email Notification, Bonnie Thomas bonnie\_thomas@progressive.com

**SIGNED:** C T Corporation System

**ADDRESS:** 3011 American Way  
Missoula, MT 59808-1921

**TELEPHONE:** 314-863-5545



# COMMISSIONER OF SECURITIES & INSURANCE

MATTHEW M. ROSENDALE, SR.  
COMMISSIONER



OFFICE OF THE MONTANA  
STATE AUDITOR

September 19, 2017

## CERTIFIED RETURN RECEIPT MAIL

CT Corporation System  
3011 American Way  
Missoula, MT 59808

Dear CT Corporation System:

Attached is a *Summons and Declaratory Judgment Act* in the case of:

KATHERINE DILLON,

Plaintiff,

v.

PROGRESSIVE CASUALTY INSURANCE COMPANY,

Defendant,

originating in the District Court of the First Judicial District of the State of Montana, in and for the county of Lewis and Clark.

Service of process was made September 19, 2017, upon the Commissioner of Securities and Insurance, Montana State Auditor, in conformity with the provisions of the Montana Code. Please contact Ramona Bidon at (406) 444-2726 with any questions.

Sincerely,

KRISTIN HANSEN  
Chief Legal Counsel

KH/lm

Enclosures

cc: Geoffrey C. Angel  
Attorney for Plaintiff

1 Geoffrey C. Angel  
2 ANGEL LAW FIRM  
3 803 West Babcock  
4 Bozeman, Montana 59715  
5 Telephone (406) 922-2210  
6 Facsimile (406) 922-2211  
7 christianangel@hotmail.com

8 Attorney for Plaintiffs

9 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

10 KATHERINE DILLON,  
11 individually and on behalf of  
12 all others similarly situated,

13 Plaintiffs,

14 vs.

15 PROGRESSIVE CORPORATION,  
16 and its subsidiaries and affiliates  
17 including PROGRESSIVE CASUALTY  
18 INSURANCE COMPANY, ARTISAN  
19 AND TRUCKERS CASUALTY  
20 COMPANY, all doing business as  
21 PROGRESSIVE@,

22 Defendants.

Cause Number DV-17

BDV 2017-19

SUMMONS

MICHAEL F MCMAHON  
PRESIDING JUDGE

23 To the above-named defendant:

24 YOU ARE HEREBY SUMMONED to answer the complaint in this action which is  
25 filed in the office of the clerk of this court, a copy of which is herewith served upon you, and to  
26 file your answer and serve a copy thereof upon the plaintiff's attorneys within 21 days after the  
27 service of this summons, exclusive of the day of service; and in case your failure to appear or  
28 answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witnesseth my hand and seal of said court, this 9 day of January 2017

Michael W. Wray  
Clerk of District Court